

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JUSTIN PARKER, ¹	§	
	§	No. 358, 2011
Respondent Below,	§	
Appellant,	§	Court Below: Family Court of
	§	the State of Delaware, in and for
v.	§	Sussex County
	§	
MADISON PARKER,	§	File No. CS09-03241
	§	
Petitioner Below,	§	
Appellee.	§	

Submitted: January 25, 2012

Decided: March 2, 2012

Before **STEELE**, Chief Justice, **BERGER** and **JACOBS**, Justices.

ORDER

This 2nd day of March 2012, upon consideration of the briefs of the parties and the record in this case, it appears to the Court that:

1. Justin Parker (“Husband”), the respondent-below, appeals from a Family Court order of property distribution and alimony ancillary to his divorce from Madison Parker (“Wife”), the petitioner-below. On appeal, Husband claims that that order contains numerous errors of fact and law, and that the court, by awarding alimony to Wife without requiring her to make efforts to become self-

¹The Court, *sua sponte*, has assigned pseudonyms to the parties pursuant to Supr. Ct. R. 7(d).

sufficient, violated 13 *Del. C.* §§ 1502(5)-(6). We conclude that Husband's claims lack merit, and affirm.

2. The parties married in 1989 and separated in February 2009. In October 2009, Wife petitioned Family Court for a divorce from Husband. A final hearing on ancillary financial matters, including property division and alimony, was held on January 18, 2011.

3. On April 29, 2011, the trial court ordered a division of the marital assets. The court determined Husband's annual gross income (including certain deductions) was \$86,591, or \$7,216 per month, and that his reasonable monthly expenses were \$2,060. The court determined that Wife's annual gross income was \$30,243, and that her reasonable monthly expenses (after the family home was sold)² were \$3,131. The court further found that "the evidence supports the finding that the parties enjoyed a 'comfortable,' but not extravagant lifestyle," and that "Wife lacks sufficient property to provide for her reasonable needs, and is unable to support herself through her current sources of income." Wife's earning potential was hindered (the court found) because she did not have a college degree. Wife had enrolled in, but dropped out of, college before the parties' marriage. Wife and Husband had discussed her returning to school, but "jointly decided against it for financial reasons."

² The home has now been sold.

4. The Family Court also found that, during the marriage, “Wife took on the role of homemaker, remaining at home and caring for the children, which allowed Husband to continue to . . . advance” in his employment. Moreover, “the only way for career advancement in [Wife’s] current employment is to earn a bachelor’s degree,” which would require considerable time and expense. Even with a bachelor’s degree, the court held, “there is no guarantee Wife would be hired as a school teacher,” and thereby enjoy a salary increase.

5. Except for a few specific items, property was divided under the Family Court’s order in the ratio of 60% to Wife and 40% to Husband.³ The court ordered Husband’s 401(k) plan and Wife’s defined benefit plan to be divided in that proportion prescribed by Qualified Domestic Relations Orders (“QDRO”). The court valued Husband’s 401(k) plan at over \$137,000. It valued Wife’s state pension plan at \$3,822, based on her required contributions (including interest), rather than on accrued benefits payable upon retirement. Marital debt was also split 60/40, with 60% allocated to Husband and 40% allocated to Wife, including a \$41,564 loan against Husband’s 401(k) plan.

³ The parties divided some assets by agreement.

6. In crafting a “Wright Chart”⁴ to divide assets and liabilities, the trial court did not include either Husband’s or Wife’s retirement plans, because those plans were “to be divided by QDRO.”⁵ On that basis, the Family Court determined that Wife was due to receive \$5,685 more in assets, and \$6,664 less in debt, than Husband. The court ordered Wife to pay Husband the resulting difference (\$12,349).

7. With respect to alimony, the Family Court calculated reasonable monthly expenses of \$2,060 for Husband and \$3,131 for Wife. Based on their expense submissions, the court ordered Husband to pay \$3,750 per month in alimony until the parties sold their jointly owned home, after which Husband would pay Wife \$2,952 in alimony per month. In making its alimony determination, the trial court relied on “FinPlan”⁶ calculations showing that both parties would have a significant surplus (roughly \$1,070 each) above their court-approved expenses. The Family Court ordered Husband to make those monthly

⁴ A “Wright Chart” is a chart accounting for and dividing the various marital assets and liabilities according to a ratio determined by the court. See, *Wright v. Wright*, 469 A.2d 803, Ex. A (Del. Fam. Ct. 1983).

⁵ The court ordered the 401(k) plan and the pension to be divided based on the so-called *Cooper* formula. See, e.g., *Forrester v. Forrester*, 953 A.2d 175, 186 at n.46 (Del. 2008).

⁶ “FinPlan” is a computer-generated “standard spreadsheet used to calculate alimony.” *Roberts v. Edwards*, 810 A.2d 350 (Del. 2002). The program “calculates the potential tax implications of an alimony award for both parties.” *Sutherland v. Sutherland*, 28 A.3d 1093, 1110 (Del. Fam. Ct. 2010).

alimony payments “indefinitely and only [to] terminate upon the death of either party or remarriage or cohabitation of Wife.”

8. Husband raises a litany of claims on appeal, which are reducible to three broad categories: (i) errors in the division of marital assets; (ii) errors in the determination of the parties’ reasonable expenses; and (iii) errors in the award of alimony. We review the facts, the law, and the inferences and deductions made in a Family Court’s property distribution and alimony decision.⁷ Questions of law are reviewed *de novo*,⁸ and factual findings will not be disturbed unless they are clearly wrong and justice requires reversal.⁹

9. Husband claims the Family Court erred in dividing the marital assets because: (i) Wife’s pension was valued based only on her contributions, (ii) Husband’s 401(k) assets were not included in the Family Court’s “Wright Chart,” and (iii) the parties’ joint PNC bank account should have been allocated exclusively to Husband, because only he contributed to it. Regarding the pension claim, the record reflects that the Family Court did not abuse its discretion in valuing Wife’s pension plan based on her contributions. A Family Court judge has

⁷ *Reynolds v. Reynolds*, 7 A.3d 485 (Del. 2010).

⁸ *Id.*

⁹ *Id.*

“broad discretion” in dividing “pension plan benefits, in particular.”¹⁰ The court did not abuse its discretion in rejecting Husband’s proposed valuation of Wife’s pension plan. The court noted that Wife’s ability to access her pension was limited.¹¹ It also found that the \$70,356 present value of Wife’s plan proposed by Husband could not be correct because, based on her contributions, “[Wife] would have had to have been employed by the State of Delaware for approximately 117 years for her pension to equal \$70,000.” As for the 401(k) claim, there is no evidence to support Husband’s claim that the “Wright Chart” was determinative in the trial court’s ultimate alimony award. Nor has Husband shown that the division of assets would have been different had the pension assets been included. And, with respect to Husband’s PNC bank account claim, Husband offers no persuasive reason, legal or otherwise, to view the PNC Bank account differently from the other marital assets that the trial court divided, regardless of which spouse contributed to it. For these reasons, Husband’s claims pertaining to the division of marital assets must fail.

10. Husband’s second set of claims is to the effect that the Family Court’s determination of the parties’ reasonable expenses was “arbitrary.” The trial court

¹⁰ *Forrester v. Forrester*, 953 A.2d 175, 186 (Del. 2008).

¹¹ The court stated that the “only way in which Wife can access these funds is to terminate her employment and request a refund or if she becomes eligible to retire and receives monthly benefits.”

approved for both parties equal amounts for certain expense categories (*i.e.*, rent, cable TV, telephone). For some categories, however, Wife was allocated more expenses than Husband. For example, Wife was awarded \$596 per month for transportation expense while Husband was awarded \$0, because Husband had access to a company car and submitted no transportation expenses. Husband was also awarded \$0 for “household items,” despite having requested a \$256 a month allocation, because that amount was deducted automatically from his paycheck to repay a loan “for the purchase of household furniture and appliances.” Stated differently, the Family Court did not credit Husband with that specific expense, because that expense had already been factored into the court’s budget calculations. Husband has not shown that that determination is erroneous.

11. Apart from those expenses and payments for a hot tub (about which the parties agreed), the additional expenses included items for which Husband did not request an expense allocation (*i.e.*, vacation, hairdresser, hobbies). Otherwise, Wife’s expense allocations for general living needs (rent, heat, cable, phone) were largely the same as Husband’s. The Family Court did not abuse its discretion in making these allocations based on the parties’ submissions. Husband also appears to criticize Wife’s overall expense allocations as generally being inflated due to Wife’s payment of expenses for her adult child. Because there is no evidence that

Wife's approved expenses were improperly increased by the amount of her payments for her adult child, Husband's claim fails.

12. Husband's third set of claims relates to the Family Court's award of alimony. These claims include that the court erred by (i) finding that Wife was dependent, (ii) failing to consider Husband's needs in making its award, and (iii) averaging Husband's income over several years, thereby capturing the impact of discretionary bonuses provided in certain recent years, yet determining Wife's income based largely on her testimony. We find that the trial court's income determinations were logical and supported by the record. Husband has not demonstrated that he was prejudiced by the trial court's determinations, which recognized that because one of Wife's 2010 employers was no longer operating, Wife would not receive any income from that source in 2011.

13. Similarly without merit is Husband's challenge to the Family Court's finding that Wife was dependent on him for support. Husband claims that the Family Court failed to observe the mandate of 13 *Del. C.* §§ 1502(5)-(6), that alimony be awarded only for a "dependent party . . . during the continuance of dependency," and that alimony should be granted in such a manner as to "encourage parties to become self-supporting." Husband relies on this Court's opinion in *Cathleen C.Q. v. Norman J.Q.* for the proposition that "[i]t is not [Delaware's] general policy to equalize divorced individuals' income or grant

alimony simply because one former spouse can afford to pay.”¹² Husband argues that the alimony award constituted such prohibited equalization and, therefore, expressly violated the statute and our case law interpreting it.

14. In *Cathleen C.Q.*, we upheld a Family Court order awarding alimony for an “indefinite term,” finding that the court had correctly applied the factors mandated by 13 *Del. C.* § 1512(c).¹³ Those factors include the standard of living established during the marriage and the ability of the party seeking alimony to meet his or her reasonable needs independently. We held that the “Family Court . . . complied with § 1512 in its determination of wife's alimony award; and [that] the Court's exercise of its discretionary power will not be disturbed upon appeal.”¹⁴ This case is indistinguishable from *Cathleen C.Q.* Husband’s claim, therefore, lacks merit.

15. Husband also objects that the Family Court’s alimony award did not allow for a modification should a change of circumstances occur. That objection is misconceived. As Wife’s brief on appeal acknowledges, under 13 *Del. C.* § 1519(a)(4) “[b]y operation of law, an order awarding alimony is modifiable upon a showing of real and substantial changes of circumstances.” Husband further

¹² *Cathleen C.Q. v. Norman J.Q.*, 452 A.2d 951, 953 (Del. 1982).

¹³ *Id.* at 953.

¹⁴ *Id.* at 953-54.

argues that the Family Court ignored his financial needs in making its alimony determination. The trial court determined alimony based in part on “FinPlan”¹⁵ projections indicating that both Husband and Wife would enjoy roughly equivalent surpluses above their approved expenses after alimony payments. Therefore, the trial court did not “ignore” Husband’s financial needs. Rather, the court expressly based its decision on an evaluation of the needs of both parties.

16. Husband claims that “the trial court ignored [Husband’s] need for transportation” in the alimony calculation. Although Husband uses a company vehicle, that use “is a taxable event-serving only to increase the income attributed” to Husband, without increasing his cash income. In supplemental briefing to this Court, Wife urged that the (implicit) inclusion of Husband’s non-cash, taxable income attributable to the company car in the court’s projection of Husband’s “cash surplus,” was at worst harmless error. We agree. In 2010, Husband’s use of that car accounted for about \$1,077 in taxable income; in 2009, it was about \$670. But, Husband’s projected cash surplus (after approved reasonable expenses) over a 12-month period totaled approximately \$12,840. Although the Family Court relied on the parties’ roughly equivalent surplus projections in its alimony determination, it was not required to divide any “surplus” with absolute mathematical precision.

¹⁵ For a definition of “FinPlan,” *see supra* note 6.

Even if Husband's non-cash income were deducted from his cash surplus, the Family Court did not abuse its discretion in reaching the result it did.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Family Court is **AFFIRMED**.

BY THE COURT:

/s/ Jack B. Jacobs
Justice